



Appellants' bankruptcy filing as well as post-petition interest at rates set forth in relevant note agreements. Appellants objected, arguing, *inter alia*, that paying the asserted "Make-Whole Amount" is prohibited by the bankruptcy code and is unenforceable under state law, and that any post-petition interest is limited to the federal judgment rate.

2. On September 21, 2017, the U.S. Bankruptcy Court for the Southern District of Texas entered an order in favor of Appellees. See **Exhibit 1**. The court held that even if the "Make-Whole Amount" were prohibited by the bankruptcy code, Appellees are still impaired by Appellants' plan unless paid their requested amounts. The court also held that the "Make-Whole Amount" is not unenforceable under New York law, and that Appellees would be impaired unless paid post-petition interest at their contract default rates.

3. On October 5, Appellants timely appealed the Bankruptcy Court's order. On October 18, pursuant to 28 U.S.C. §158(d)(2) and Federal Rule of Bankruptcy Procedure 8006, Appellants timely requested that the Bankruptcy Court certify its October 5 order for direct appeal by the U.S. Court of Appeals for the Fifth Circuit. On October 26, the Bankruptcy Court certified its order for direct appeal by the Fifth Circuit. See **Exhibit 2**.

4. Following the Bankruptcy Court's certification of this matter for direct appeal to the Fifth Circuit, on November 27, pursuant to 28 U.S.C. §158(d)(2), Appellants timely petitioned the Fifth Circuit to accept the Bankruptcy Court's certification and permit direct appeal to the court of appeals. See **Exhibit 3**.<sup>2</sup> Appellants' petition remains pending in the Fifth Circuit.

5. On November 30, this Court issued a notice of receipt of the bankruptcy record on appeal, and, pursuant to Fed. R. Bankr. P. 8018, accordingly set the following default schedule for

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<sup>2</sup> Although Appellants timely filed and served the petition on November 27, the Fifth Circuit did not docket the petition until November 29.

briefing of the appeal in this Court: Appellants' brief due in 30 days; Appellees' brief due 30 days thereafter; and Appellants' reply brief due 14 days thereafter. *See* Dkt. 3.

6. In light of their pending petition to the Fifth Circuit for direct appeal, Appellants respectfully request that this Court stay its default briefing schedule until resolution of that petition by the Fifth Circuit. Staying the briefing schedule will prevent the parties from expending time and expense on preparations in this Court that may ultimately prove unnecessary or duplicative should the Fifth Circuit accept the Bankruptcy Court's certification and permit an appeal directly to the court of appeals. Staying the briefing schedule will also provide the parties and this Court with greater clarity regarding the orderly operation of proceedings while Appellants' petition remains pending in the Fifth Circuit.

7. In similar situations, district courts within this circuit have stayed briefing schedules while petitions for direct appeal were pending before the Fifth Circuit. *See, e.g., In re Wiggains*, No. 15-CV-3121 (N.D. Tex. Dec. 12, 2015) (Dkt. 7) (suspending briefing schedule until resolution of petition for direct appeal); *In re Halo Wireless, Inc.*, No. 11-cv-795 (E.D. Tex. Dec. 16, 2011) (Dkt. 5) (same).

8. Upon resolution of their petition to the Fifth Circuit, Appellants will inform this Court of the Fifth Circuit's decision. If the petition is granted, the appeal will go forward in the Fifth Circuit. If the petition is denied, the appeal will go forward in this Court.

9. Appellants have conferred with Appellees, who do not oppose Appellants' request for a stay.

*[Remainder of page intentionally left blank]*

WHEREFORE, Appellants respectfully request that this Court stay the default briefing schedule pending the Fifth Circuit's resolution of Appellants' petition for direct appeal.

Houston, Texas  
December 4, 2017

Respectfully submitted,

*/s/ Sarah E. Williams*

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